

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of

Index No.

08-01789

THE SIPA LINK,

Debtors.

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April 30, 2009

United States Custom House

One Bowling Green

New York, New York 10004

Pretrial Conference; motion to approve sale of the  
market making operations business previously operated by  
the Debtor, et al.

B E F O R E:

HON. BURTON R. LIFLAND,

U.S. Bankruptcy Judge

A P P E A R A N C E S:

BAKER HOSTETLER, LLP

Attorneys for Irving H. Picard, SIPA  
Trustee and Counsel for the Trustee  
45 Rockefeller Plaza  
New York, New York 10017

BY: MARC E. HIRSCHFIELD, ESQ.

-and-

JOE CONTI, ESQ.

-and-

ALISSA NANN, ESQ.

-and-

DOUG NEVIN, ESQ.

SECURITIES INVESTOR PROTECTION CORPORATION

805 15th Street, Suite 800  
Washington, D.C. 20005

BY: KEVIN H. BELL, ESQ.

1 THE COURT: The SIPA Link.

2 MR. HIRSCHFIELD: Good morning, Your Honor.  
3 Marc Hirschfield from Baker Hostetler.

4 THE COURT: Yes. Good morning.

5 MR. HIRSCHFIELD: Good morning.

6 With me today in Court is Irving Picard,  
7 the Trustee; Kevin Bell, from SIPC; as well as Joe Conti  
8 and Alissa Nann and Doug Nevin from my office. We are  
9 here today for the second time on the sale of the Debtor's  
10 market maker assets.

11 As I have discussed with chambers this  
12 morning, there are still a few moving pieces that need to  
13 get nailed down in terms of the form of the agreement and  
14 perhaps the proposed order.

15 What we would like to do with Your Honor's  
16 permission is proceed with the hearing today, and keep the  
17 record open at the end of the hearing. To the extent that  
18 things get resolved later today we could submit the order.  
19 If not, we would have the need to come back. But I am  
20 fairly confident that we will be able to get things  
21 resolved and that we will be able to submit the order in  
22 short order.

23 Is that okay?

24 THE COURT: You may proceed.

25 MR. HIRSCHFIELD: Great. Thank you, Your

1 Honor.

2 When we were here last before the Court on  
3 April 7th to establish bid procedures, I informed the  
4 Court, between the time we filed the motion and that  
5 hearing date, that we had received a number of inquiries  
6 about people who were potentially interested in bidding for  
7 the market maker assets, and I had said that we hoped to  
8 receive a number of bids by the bid deadline. We received  
9 several bids, three to be exact, by the April 26th bid  
10 deadline.

11 At that prior hearing I also informed the  
12 Court that we hoped to have a full and vibrant auction when  
13 the auction came to pass.

14 And, in fact, we did have a full and  
15 vibrant auction, Your Honor. One bidder withdrew its bid  
16 prior to the auction. The other two bidders along with  
17 the stalking horse bidder participated in auction earlier  
18 this week, and the results are pretty compelling.

19 The stalking horse bidder, Castor Pollux,  
20 is the highest and best bidder in our view. Their bid was  
21 a \$500,000 cash at closing and earn-out of up to \$15  
22 million increased substantially. The cash portion went  
23 from \$500,000 to \$1 million and the earn-out went from, as  
24 I said, 15 million to \$24.5 million. And, in addition, to  
25 the amount going up the mechanics under which it is getting

1 paid is more favorable to the estate.

2 As the Court may be made aware, at various  
3 times that Mr. Madoff valued the market maker at hundreds  
4 of million dollars and obviously what we are seeking  
5 approval for today is well below that. It appeared that  
6 Bernard Madoff overstated the value of the assets just as  
7 he overstated the value of people's investment with him.  
8 In short, you can't trust any number that Mr. Madoff puts  
9 out.

10 In addition, as we went through the process  
11 we went through from a number of potential bidders that the  
12 fact that the market maker platform associated with Bernie  
13 Madoff was something that made people feel that they didn't  
14 want to build. So there was a certain amount of taint  
15 having been associated with Bernie Madoff.

16 With the Court's permission I would like to  
17 proffer the testimony of Timothy Dana from Lazard. The  
18 Trustee obtained Lazard to assist with the sales process,  
19 and if Your Honor would permit I would proffer his  
20 testimony as to the procedures.

21 THE COURT: Does anyone else want to be  
22 heard with respect to the subject of the proffer and  
23 subject to any question?

24 You may continue.

25 MR. HIRSCHFIELD: Your Honor, Mr. Dana

1 would testify as follows. He would say he is a managing  
2 director with Lazard & Freres Company; that he has over 15  
3 years experience in the financial industry as an investment  
4 banker and that he specializes in transactions involving  
5 financial institutions.

6 He would say that on or about December 19,  
7 2008, Lazard was retained by Irving Picard, the Trustee,  
8 appointed by the Securities Investor Protection Corporation  
9 for the liquidation of Bernard L. Madoff Investment  
10 Securities LLC, under the Securities Investor Protection  
11 Act.

12 Lazard was retained to assist the Trustee  
13 in efforts to market and locate a buyer for the market  
14 maker and proprietary trading assets of BLMIS.

15 He would testify that shortly thereafter,  
16 the Trustee issued a press release announcing the retention  
17 of Lazard and the proposed sale of the market maker and  
18 proprietary trading assets.

19 He would testify that Lazard contacted  
20 approximately 110 parties, including strategic buyers,  
21 customers of the market maker business, private equity and  
22 venture capital firms, hedge funds and individuals in order  
23 to solicit interest from potential bidders.

24 He would testify that Lazard as well as  
25 Baker & Hostetler engaged in due diligence and extensive

1 document review to prepare an online data room.

2 In late December 2008, Lazard and Baker &  
3 Hostetler began to send out packages with informational  
4 materials to potential bidders who had signed  
5 confidentiality agreements. 46 potential bidders executed  
6 confidentiality agreements and returned them to Baker.

7 All 46 potential bidders that executed  
8 confidentiality agreements were provided a data pack of  
9 information and ten of them were granted access to the data  
10 room.

11 He would testify that Baker and Lazard  
12 worked with the employees of BLMIS's market maker and  
13 proprietary trading businesses to prepare management  
14 presentations. The management team discussed the  
15 presentation with seven potential bidders.

16 Four offers were received for the market  
17 maker assets, and the Trustee and his professionals entered  
18 into extensive negotiations with the offerors to maximize  
19 these offers and the returns for the benefit of the BLMIS  
20 estate, customers and creditors.

21 Ultimately, after a reasonable period of  
22 marketing under the circumstances and negotiations with  
23 other parties, the Trustee selected Castor Pollux  
24 Securities, LLC to serve as the stalking horse bidder in  
25 the proposed auction.

1 He would further state that the trustee and  
2 Castor Pollux agreed to the terms and conditions in the  
3 asset purchase agreement, pursuant to which the Trustee  
4 proposed to sell certain assets related to BLMIS's market  
5 maker and proprietary trading operations, subject to higher  
6 and better offers.

7 He would testify further, subject to and  
8 consistent with the agreement, the Trustee proposed bidding  
9 procedures, designed to maximize the value of the assets  
10 for the estate of BLMIS, customers, creditors, and other  
11 interested parties.

12 He would also say that after filing the  
13 Trustee's motion, Lazard contacted approximately 36  
14 parties, who had previously expressed interest in the  
15 assets to determine whether any of those parties had  
16 renewed interest in participating in the sale process and  
17 submitting a competing bid. Lazard was contacted by six  
18 new parties who expressed an interest in submitting a  
19 competing bid.

20 He would say that he was contacted by six  
21 new bidders who executed a confidentiality agreement at  
22 this point. Ten bidders in total received the updated  
23 confidential informational package Of these ten bidders,  
24 three bidders conducted further due diligence and attended  
25 a management presentation.



1 He would further say that by the bid  
2 deadline of April 22, the Trustee received three bids in  
3 addition to its stalking horse bidder, though one bid was  
4 withdrawn on April 24.

5 He would further say that between April 22  
6 and April 27, the date on which the auction was held,  
7 Lazard engaged in numerous discussions with the bidders  
8 regarding the potential terms of their bids.

9 An auction took place on Monday, April 27,  
10 at the offices of Baker & Hostetler where the stalking  
11 horse bidder and the two remaining competing bidders  
12 participated in the auction.

13 He would state that the auction was  
14 conducted in four phases and was transcribed by a court  
15 reporter.

16 The first was an open cry auction where  
17 participants were able to bid up each of the earn-out and  
18 cash portions of their bids.

19 Phase 2 of the auction he would say  
20 involved the Trustee and his professionals speaking with  
21 each bidder in private to identify the noneconomic aspects  
22 of their bid that could be improved. And at that point the  
23 bidders also had the chance to increase any component of  
24 their bid and monetary amounts at that time.

25 He would further testify that phases 3 and

1 4 of the auction involved final bidding on the earn-out and  
2 cash portion of the bid payable at closing.

3 He would say that the bids were evaluated  
4 by the Trustee and his professionals in their totality and  
5 the further factors that were considered among others  
6 including: Total value; cash at closing; net present value  
7 of bid; certainty, amount and source of funding available  
8 for the capital needs of the business; likelihood and  
9 timing of successfully starting up the operations;  
10 experience of the buyer and its management team; earn-out  
11 mechanism and the likelihood of the earn-out being paid;  
12 regulatory risk-i.e., whether the bidder had a  
13 broker-dealer and FINRA-approved risks; business  
14 intentions, including the ability of the bidder to gain  
15 back customers and maximize order flow.

16 He would then testify after a careful  
17 review of all bids, the Trustee and his professionals  
18 conferred regarding their views of the various bids  
19 submitted by the bidders.

20 He would say upon Lazard's recommendation  
21 in the Trustee's business judgment, the bid of Castor  
22 Pollux was determined to be the highest and best offer for  
23 the assets and the Guzman & Company bid was selected as the  
24 second highest bid.

25 The Castor Pollux bid is for \$1.0 million

1 payable at closing and up to \$24.5 million in earn-out  
2 payments. The Guzman bid is for \$550,000 payable at  
3 closing and up to \$24.0 million in earn-out payments.

4 He would finally testify that he believes  
5 that the asset purchase agreement was negotiated in good  
6 faith and is the result of arms-length negotiations.

7 Accordingly, I believe at Castor Pollux  
8 would be a good faith purchaser. That would be his  
9 testimony.

10 THE COURT: Does anyone else want to be  
11 heard with respect to the proffer or does anyone want to  
12 examine the witness?

13 Hearing there is no response, the proffer  
14 is accepted.

15 MR. HIRSCHFIELD: Thank you, Your Honor.

16 As I mention, we did file last week a  
17 revision of the APA as well as a proposed sale order. As  
18 I said earlier there might be some earlier to the APA, as  
19 they principally form into three categories.

20 One is to change the economics based upon  
21 the results of the auction; secondly, we had to revise the  
22 earn-out. As I mentioned, the earn-out mechanism changed  
23 in order to make it more favorable to the estate and  
24 finally it changed because of the Primex.

25 That requires a little bit background for

1 Your Honor. Primex is a company that owns certain  
2 intellectual property that was formerly listed in NASDAQ.  
3 Primex is nominally owned by various members of the Madoff  
4 family and others. In fact, all or substantially all of  
5 the money used to capitalize Primex came from BLMIS.

6 Accordingly, we believe this asset should  
7 be the property of BLMIS and while we didn't wish to engage  
8 in a fight about that, as part of the sale, Castor Pollux  
9 and other bidders requested a nonexclusive license to use  
10 that intellectual property.

11 Primex led by Peter Madoff, Bernie Madoff's  
12 brother said they would only grant the license if we pay  
13 the licensing fee of \$500,000. Obviously, we rejected  
14 that as out of hand, and we then had negotiations with  
15 Castor Pollux and the other bidders to get them to remove  
16 that condition as a condition to the closing.

17 Each of the bidders including Castor Pollux  
18 and the Guzman company agreed to that, Your Honor.

19 That said, Your Honor, we did agree with  
20 Castor Pollux and with Guzman and others to the extent we  
21 acquire Primex, subsequently we would grant the license to  
22 the winning builders on a nonexclusive basis.

23 Just a few things up to the Court. There  
24 is likely to be a litigation in the near future where we  
25 seek to bring Primex in this estate. As we said this is

1 our intention. BLMIS paid for Primex. It, in fact,  
2 belongs to all of us and not to the Madoff family members;  
3 and as such we would move to sign and assume several  
4 executory contracts to the purchaser.

5 Notice of that was given to each  
6 counterparty along with the proposed cure amount in which  
7 each case was zero. No responses were received by any of  
8 the counterparties and, therefore, we would ask that Your  
9 Honor approve that with the motion. Speaking objections,  
10 none were filed to any portion of the motion.

11 So in summary we believe Castor Pollux had  
12 the highest and best bid; Guzman had the second and highest  
13 bid; and subject to any modifications of the agreement we  
14 have today we would ask that the Court ultimately approve  
15 the motion.

16 THE COURT: Does anyone else want to be  
17 heard?

18 MR. BELL: Your Honor, SIPC supports the  
19 Trustee's motion to sell this market maker asset, and I  
20 would note to the Court that the entire cost of the effort  
21 to market and sell this asset as will be borne by  
22 advances from administrative expenses by SIPC and the  
23 entire proceeds will be available for the benefit of the  
24 customer victims of this case.

25 THE COURT: Does anyone else want to be

1 heard?

2 Hearing no response, this record does  
3 support a finding that justifies the Trustee's view that  
4 what it has in hand is the highest and best offer and I do  
5 approve the motion.

6 MR. HIRSCHFIELD: We could keep the record  
7 open and if there is any corrections we would inform you of  
8 that.

9 THE COURT: Very well.

10 MR. HIRSCHFIELD: Thank you, Your Honor.

11 THE COURT: Submit the appropriate order.

12 MR. HIRSCHFIELD: Thank you.

13 THE COURT: Thank you.

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C E R T I F I C A T E

STATE OF NEW YORK            }  
  }       ss.:  
COUNTY OF NEW YORK        }

I, MINDY CORCORAN, a Shorthand Reporter  
and Notary Public within and for the State of New York, do  
hereby certify:

That I reported the proceedings in the  
within entitled matter, and that the within transcript is a  
true record of such proceedings.

I further certify that I am not related, by  
blood or marriage, to any of the parties in this matter and  
that I am in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 30th day of April, 2009.

\_\_\_\_\_  
MINDY CORCORAN